

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOHN HARDY, LTD.)	
)	
Plaintiff,)	
)	
v.)	No. 11-cv-3546 (HB/MHD)
)	
NKA CORP., d/b/a NK NEW YORK, and)	
NK JEWELRY)	
)	
Defendants.)	

**DECLARATION OF DAMIEN DERNONCOURT IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

I, Damien Dernoncourt, make the following Declaration, pursuant to 28 U.S.C. § 1746:

1. I make the following statements on my own personal knowledge and, if called upon to do so, could and would competently testify thereto.

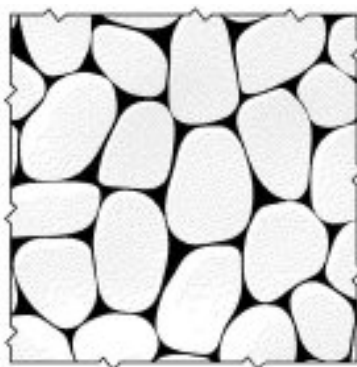
2. I am President of John Hardy Limited (“Hardy”) and in that position oversee the entire company's business. This Declaration is therefore made on my personal knowledge, and if called to testify as to the facts set forth herein, I would and could competently do so.

John Hardy Background

3. In 1989, under its brand name JOHN HARDY®, Hardy began designing, manufacturing, promoting, marketing and selling a line of unique handcrafted jewelry products, known for their distinctive design, exceptional quality, precious stones, unique materials and superior craftsmanship. Under the original direction of one of America's leading jewelry designers, Mr. John Hardy, Hardy has flourished and has become widely regarded as a leading American jewelry design company. The Hardy brands and products are produced in Bali, Indonesia and shipped worldwide. Hardy currently has over 900 employees in Bali, Hong Kong and Bangkok, with 70 of its distributors in New York.

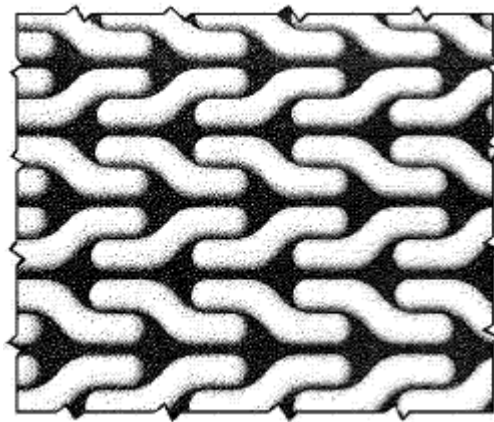
4. Hardy is the owner of numerous copyright and trademark registrations in the United States, including for the trademark “John Hardy,” which is a well-known mark in the United States and internationally. Hardy has an extensive collection of copyrights for its designs, including copyrights for designs in its “Kali,” “Dayak,” and “Palu” collections. The copyright registrations relevant here are attached as Exhibits B, D, E, and K to the Complaint, attached as Exhibit A to the Declaration of Maxim H. Waldbaum (“Waldbaum Decl.”)l. John Hardy’s copyrighted designs include, *inter alia*, registration numbers 983-344, VAu 1-019-440, VA 1-114-310, VA 1-158-160, VA 1-158-170, VA 1-158-685, VA 1-253-180, VA 1-253-185, VA 1-286-227, VA 1-322-303, VA 1-322-306, VA 1-322-943, VA 1-405-095, VA 1-418-882 (the “Kali Copyrights”), VA 1-380-516, VA 1-411-047, and VA 1-402-734 (the “Palu Copyrights”), and VA1-039-044 (the “Dayak Copyrights”) (collectively, the “Hardy Copyrights”).

5. For over 10 years, Hardy has continuously used in commerce, on a substantially exclusive basis, jewelry bearing the design trademarked under U.S. Registration No. 3,460,095, in connection with the sale of its fine jewelry. (Waldbaum Decl. Ex. A, at Ex. C). This unique and highly recognized design, depicted below, consists of a random array of irregularly-shaped ovals and circles (the “Kali Design”). The official design trademark example is shown below:



6. For over 13 years, Hardy has continuously used in commerce, on a substantially exclusive basis, jewelry bearing the design trademarked under U.S. Registration No. 3,460,087, in

connection with the sale of its fine jewelry. (Waldbaum Decl. Ex. A, at Ex. F). This unique and highly recognized design, depicted below, consists of an S and reverse-S shape in an alternating pattern that forms a chain (the “Interlocking S Design”). The official design trademark sample is shown below:



7. Hardy also uses the NAGA word mark, U.S. Registration No. 3,921,930 (the “Naga Mark”), in connection with its jewelry. (Waldbaum Decl. Ex. A, at Ex. A).

8. Hardy’s trademarks are well known, and in the industry designate jewelry originating with Hardy. Since 2005 in the United States, Hardy has sold over 1,100,000 pieces of fine jewelry, including over 230,000 pieces of jewelry utilizing the overall look and feel of the Kali Design, over 270,000 pieces of jewelry utilizing overall look and feel of the Interlocking S Design, and over 55,000 pieces of jewelry associated with the Naga Mark, so that consumers have come to rely upon the continuous commercial impressions and use these designs to identify and distinguish Hardy's products from others.¹

9. The Hardy Copyrights, Kali Design, Interlocking S Design, and Naga Mark are sold in connection with Hardy's well-known JOHN HARDY trademark (U.S. Reg. No. 1,864,617,

¹ Due to record-keeping procedures in Hardy’s United States sales logs, these figures include sales to the Caribbean islands from 2005 to 2008. However, Caribbean sales were negligible and do not substantially change these numbers.

among others). The Hardy jewelry products, including those protected by the Hardy Copyrights and bearing the Kali Design, Interlocking S Design, and Naga Mark, are sold in approximately 450 retail stores throughout the United States, including such high end retailers as Neiman Marcus, Saks Fifth Avenue, Bloomingdales, and Nordstrom.

10. Purchasers of fine jewelry do not want a trademark to appear on a piece of fine jewelry. Therefore, based on extensive sales and use, in the minds of consumers, the Kali Design, Interlocking S Design, and Naga Marks have become indicators of source and quality. Since consumers know and look for these well-known Hardy trademarks, each is distinctive and has built up extremely valuable goodwill inuring solely to the benefit of Hardy.

11. When considering the number of pieces made and sold by Hardy, and the fact that jewelry is an enduring product, Hardy's designs create countless consumer impressions -- not just to its purchasers, but to others who see the product worn by a purchaser.

12. Hardy spends enormous amounts of time, resources and effort to cultivate a reputation for producing jewelry of the finest design, materials and craftsmanship. Hardy spends millions of dollars in advertising its jewelry products in nationally recognized magazines, newspapers and high-end catalogs such as Town and Country, The New York Times, InStyle, Elle, Vanity Fair, Vogue, Neiman Marcus, Bloomingdales and Saks Fashions, billboard advertisements, and public appearances at trade shows and in-store appearances. As a result of extensive advertising and longevity in the marketplace, Hardy is well-known globally as a prominent designer and manufacturer of high-quality fine jewelry products. Such advertising is in addition to unsolicited media coverage -- such as celebrities photographed wearing Hardy's jewelry bearing the Kali Design, Interlocking S Design, and sold under the Naga Mark. Moreover, since the jewelry industry is style and fashion-oriented, the recognition and fame of these designs is also created by

"word-of-mouth" exposure from industry experts and jewelry aficionados who want to be seen wearing jewelry that bears these designs. The amount and effect of this type of advertising is so extensive that Hardy is unable to quantify its extent.

NKA's Conduct

13. In spring, 2011, Hardy became aware of NKA's website at www.nknewyork.com. The website design itself was confusingly similar to Hardy's previous website design, to the point where it would be likely to misled consumers into believing NKA was associated with Hardy.

14. The website itself shamelessly replicated Hardy's prior website design layout, Hardy's recognizable colors, web page text descriptions, and other protected aspects of Hardy's website. For example, below is a sample comparison of text used on the previous Hardy site and the "NK New York" site, the often-methodically copied text in bold:

Previous John Hardy Website	NKA Website
Sections within the page titled " John Hardy Spirit ": "Our Vision Our Mission Our Values"	Sections within the page titled " Our Spirit ": "Our Values Our Vision Our Mission"
Text of section titled " Our Vision ": "We will be the recognized leader in luxury handmade designer jewelry and lifestyle accessories inspired by the essence of the earth."	Text of section titled " Our Vision ": "To be recognized as a leader in the industry for our artistry blended with the deep rooted traditional culture of the lovely island, Bali."
Text of section titled " Our Mission ": " We are a people company responsibly creating handmade designer jewelry and lifestyle accessories. "	Text of section titled " Our Mission ": " We are a 'people focused' company with only the highest standards in every aspect of our business. Our passion is creating artistic and original handmade designer jewelry and lifestyle accessories. "

Previous John Hardy Website	NKA Website
<p>Text of section titled “Designers & Artisans”:</p> <p>“The early John Hardy pieces grew out of four traditional Balinese jewelry-making techniques: rantai (woven chain); tenun (woven mesh); jawan (granulation); and ukiran (cut work).</p> <p>Master jeweler Werner Bellezer developed superbly engineered clasps and introduced modern technical solutions to make the jewelry more comfortable and durable.</p> <p>[...] He works with a team of highly skilled craftsmen, from illustrators to wax-carvers and silver and goldsmiths. Artisans in Thailand, experts in the art of gemstone cutting and setting, also bring the knowledge of generations to the making of John Hardy jewelry.”</p>	<p>Text of section titled “Designers & Artisans”:</p> <p>“Our Designers are multi-talented Balinese people with ancient animistic beliefs. Our distinctly Hindu culture clearly is reflected in our unique and original designs. The design team captures the impact of imagination and intuition in the work. The Artisans bring their deep knowledge and process of jewelry making techniques like Rantai (woven chain), Tenun (woven mesh), Jawan (granulation), and Ukiran (cut work). The master jeweler works with a team of highly skilled craftsmen. From illustrators, to wax carvers, to silver and goldsmiths, artisans in Bali are experts in the art of silver & gold jewelry, gemstone cutting and setting.”</p>
<p>Text of section titled “Greener Everyday”:</p> <p>“We can always do better. We are implementing energy efficiency programs, and evaluating ways to become a carbon neutral or even carbon negative company through all areas of our operations.”</p>	<p>Text of section titled “Greener Everyday”:</p> <p>“We are implementing energy efficiency programs and consistently evaluating ways to become a carbon neutral and ultimately a carbon negative company throughout all areas of our operation.”</p>

15. The site also advertised jewelry that substantially copied Hardy jewelry and infringed various Hardy copyrights and trademarks, including the Kali Design, the Interlocking S Design, and numerous other copyrights for specific jewelries. Additionally, the website clearly used the Naga word mark in conjunction with NKA’s jewelry. See Waldbaum Decl., Ex. A, at Ex. I.

16. Examples of jewelry using infringing designs and being advertised at the www.nknewyork.com web site are attached to the Complaint, Waldbaum Decl. Ex. A at Ex. K; and Waldbaum Decl. Exs. B and D. For example, examples of infringing jewelry are inserted below with arrows to indicate elements infringing on Hardy's Kali and Interlocking design trademarks:



NKA Jewelry Infringing the Kali Trademarked Design²

² This piece is advertised at www.nknewyork.com. Due to the web site's format, a direct URL citation is not available. The piece is located at www.nknewyork.com under the menu "Catalogs," and submenu "Ring."



NKA Jewelry Infringing the Interlocking S Trademarked Design³

17. When I first saw the jewelry advertised on the NKA website, based on my familiarity with Hardy's jewelry and the fine jewelry market in general, I knew instantly that NKA illicitly and intentionally appropriated the Hardy designs discussed above, including those protected by the Hardy Copyrights, the Kali Design, and the Interlocking S Design.

18. Specifically, given my experience in the fine jewelry market and with Hardy jewelry, it is immediately clear that in the NKA "Kali" example above, the irregularly shaped circles and ovals is the same design as, and unmistakably infringes on, the Hardy Kali Design. It is almost identical to the Kali trademark registration sample. It is immediately clear that in the NKA "Interlocking S" example above, the interlocking S design element is the same design as, and

³ This piece is advertised at www.nknewyork.com. Due to the web site's format, a direct URL citation is not available. The piece is located at www.nknewyork.com under the menu "Catalogs," and submenu "Pendant."

unmistakably infringes on, the Interlocking S Design. It is almost identical to the Interlocking S trademark registration sample.

19. Additionally, certain of Hardy's former employees familiar with Hardy's designs have begun working for NKA, and are likely helping NKA to copy Hardy designs.

20. In early June, I discovered that NKA had disabled its website. However, I discovered that NKA had re-enabled its website in early July. A few infringing features were slightly modified in the new site, including the website color scheme, and substantially copied company statements. However, after the site was re-enabled, many infringing jewelry items remained on the site. Specifically, jewelry infringing Hardy's copyrights, and the Kali and Interlocking S design trademarks, continued to be advertised, including on the home page of the website.

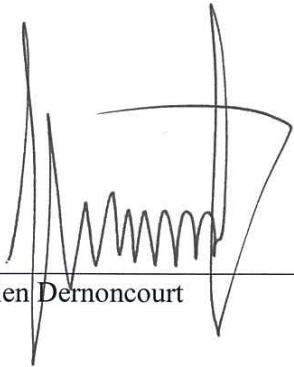
21. NKA is also currently advertising and selling its infringing jewelry through a number of national jewelry retailer websites, including the widely used jewelry shopping channel website, PoshTV. These websites advertise and sell tens to hundreds of infringing "NK New York" jewelry items, often for hundreds of dollars.

22. NKA's jewelry is certainly likely to confuse a substantial portion of consumers into thinking that the NKA jewelry originates, is sponsored by, or is affiliated with Hardy, or at least into thinking that Hardy has authorized the poorer quality pieces using the distinctive Hardy designs.

23. If NKA is allowed to continue sell and advertise their illicit pieces, Hardy's reputation and the goodwill and reputation in consumers' minds associated with each of the copyrighted designs, as well as the Kali Design, the Interlocking S Design, and the Naga Mark, will be injured significantly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of August, 2011.



Damien Derroncourt

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